

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

UNITED STATES OF AMERICA,)	
)	
v.)	Crim. No. 96-48-B-C
)	
HARRY MURPHY SEAVEY,)	
)	
Defendant)	

RECOMMENDED DECISION

Defendant Harry Murphy Seavey was convicted on July 7, 1997, after pleading guilty to being a felon-in-possession of a firearm (Count I), obstructing commerce by robbing the Big Apple convenience store in Belfast, Maine (Count II), and using or carrying a firearm during and in relation to a crime of violence (Count III), in violation of 18 U.S.C. §§ 922(g)(1) and 924(e), 18 U.S.C. § 1951(a), and 18 U.S.C. § 924(c). He received concurrent terms of 188 months in prison on Counts I and II, and a consecutive 60 month term on Count III. Seavey has already pursued an unsuccessful direct appeal and an equally unavailing motion pursuant to 28 U.S.C. § 2255.

Seavey now has filed a motion to modify his sentence in the above-referenced case pursuant to 18 U.S.C. § 3582, which authorizes a court to entertain such a motion when a sentencing range has been subsequently lowered by the Sentencing Commission and the Commission has further determined that as a matter of policy the reduced sentencing range should be applied retroactively. The issue Seavey raises pertains to the applicability of Amendment 599 to his case. Guideline Amendment 599 “directs that no guideline weapon enhancement should be applied when determining the sentence for the crime of violence or drug trafficking offense underlying the 18 U.S.C. § 924(c)

conviction. . .” The Sentencing Commission has further determined that Amendment 599 may be applied retroactively. See U.S.S.G. §1B1.10(c); United States v. Aquino, 242 F.3d 859, 865 (9th Cir. 2001).

When computing Seavey’s sentence pursuant to the guidelines the presentence report author did initially add a six level enhancement because Seavey brandished and used a firearm to commit the underlying offense. The base offense level of 20 for Counts I and II was thereby enhanced. However, the resulting total offense level of 23 was merely academic because Seavey had at least three prior convictions for crimes of violence and was an Armed Career Criminal. Therefore pursuant to U.S.S.G. § 4B1.4, his total offense level was 31 without regard for any weapons enhancement. He was sentenced to the 188 month term based upon his armed career criminal status not based upon a weapon enhancement. Thus Seavey’s reliance upon the retroactivity of Amendment 599 is misplaced.

To the extent Seavey attempts to raise other arguments in support of sentence modification, § 3582 does not provide the necessary statutory support. His memorandum appears to attempt to challenge his status as an armed career criminal by casting doubt upon the validity/applicability of the predicate state convictions. A motion filed pursuant to § 3582 is certainly not the appropriate vehicle to mount such a challenge. Furthermore there appears to be little merit to Seavey’s contention that his Maine burglary convictions do not qualify as “violent felonies.” See United States v. Sawyer, 144 F.3d 191, 194-95 (1st Cir. 1998).

Conclusion

Based upon the foregoing, I recommend that the court **DENY** defendant's motion to modify his sentence pursuant to 18 U.S.C. § 3582.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

Margaret J. Kravchuk
U.S. Magistrate Judge

Dated July 10, 2001

U.S. District Court

District of Maine (Bangor)

CRIMINAL DOCKET FOR CASE #: 96-CR-48-ALL

USA v. SEAVEY

Filed: 08/13/96

Other Dkt # 1:96-m -00050

Case Assigned to: JUDGE GENE CARTER

HARRY MURPHY SEAVEY (1) TERENCE M. HARRIGAN, ESQ.

defendant [term 07/07/97]

[term 07/07/97] [COR LD NTC cja]

VAFIADES, BROUNTAS & KOMINSKY

23 WATER STREET, P. O. BOX 919, BANGOR, ME 04401

(207) 947-6915

HARRY MURPHY SEAVEY

[COR LD NTC] [PRO SE]

BOX 2000/10119-036
WHITE DEER, PA 17887

Pending Counts: Disposition

18:922G.F UNLAWFUL TRANSPORT OF FIREARMS, ETC.

Imprisonment of 188 months on Count 1 and 188 months on Count 2, to be served concurrently.
Imprisonment of 60 months on Count 3, to be served consecutively for a total sentence of 248 months. Deft remanded to custody of US Marshal. 5 years Supervised Release on Count 1 and 3 years on Count 2, to be served concurrently. \$300 Special Assessment; Restitution to CN Brown Co. of \$846.20.

18:1951.F INTERFERENCE WITH COMMERCE BY THREAT OR VIOLENCE

Imprisonment of 188 months on Count 1 and 188 months on Count 2, to be served concurrently.
Imprisonment of 60 months on Count 3, to be served consecutively for a total sentence of 248 months. Deft remanded to custody of US Marshal. 5 years Supervised Release on Count 1 and 3 years on Count 2, to be served concurrently. \$300 Special Assessment; Restitution to CN Brown Co. of \$846.20.

18:924C.F VIOLENT CRIME/DRUGS/MACHINE GUN

Imprisonment of 188 months on Count 1 and 188 months on Count 2, to be served concurrently.
Imprisonment of 60 months on Count 3, to be served consecutively for a total sentence of 248 months. Deft remanded to custody of US Marshal. 5 years Supervised Release on Count 1 and 3 years on Count 2, to be served concurrently. \$300 Special Assessment; Restitution to CN Brown Co. of \$846.20.

Offense Level (opening): 4

Terminated Counts:

NONE

Complaints Disposition

18:922(g)(1), 924(e) - Felon in Possession - Armed Career Criminal
[1:96-m -50]

U. S. Attorneys:

F. MARK TERISON, 780-3257

MARGARET D. MCGAUGHEY, ESQ.

OFFICE OF THE U.S. ATTORNEY

P.O. BOX 9718, PORTLAND, ME 04104-5018

(207) 780-3257

GAIL FISK MALONE

U.S. ATTORNEY'S OFFICE, P.O. BOX 2460, BANGOR, ME 04402-2460, 945-0344